

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CA0986
)	EEOC NO.: 21BA90054
RICKY MCKNIGHT)	ALS NO.: 10-0066
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen presiding, upon Ricky McKnight's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2009CA0986; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following:

1. The Petitioner filed a charge of discrimination with the Respondent on October 25, 2010. The Petitioner alleged that Securitas Security Services USA, Inc., ("Employer") transferred him on June 10, 2008 (Count A), reduced his work hours on June 19, 2008 (Count B), and discharged him on July 3, 2008 (Count C) because of his age, 50, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On December 22, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On January 21, 2010, the Petitioner filed a timely Request. On March 16, 2010, the Petitioner filed his Reply to the Respondent's Response.
2. The Petitioner was first hired by the Employer as a Flex Security Officer in April 2006.
3. On April 13, 2006, the Employer required the Petitioner to sign an "Employment Standards Acknowledgment." The "Acknowledgment" informed the Petitioner that he was employed by the Employer, and not by the Employer's clients. The "Acknowledgment" also informed the Petitioner that he should expect to be transferred by the Employer to different facilities, depending on the needs of the Employer's clients. Finally, the "Acknowledgment" informed

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

the Petitioner that these transfers might result in varying hours and changes in rates of pay based on the Employer's contract with the client.

4. Between April 2006 and June 2008, the Respondent determined that the Employer had assigned the Petitioner to at least 12 different sites. During that time period the Petitioner worked between 15 and 40 hours per week.
5. On June 5, 2008, at the request of the Employer's client, a Chicago-area university, the Employer removed the Petitioner and another younger employee (age 29) from the university work site.
6. On June 10, 2008, the Employer assigned the Petitioner work for a housing development company. For the week ending Thursday, June 12, 2008, the Petitioner worked 18 hours because he was in training at the housing development company.
7. For the week ending Thursday, June 19, 2008, the Petitioner worked 32 hours at the site of the housing development company. Security officers younger than the Petitioner and assigned to the housing development company, worked between 23 hours and 32 hours.
8. On June 30, 2008, the Property Manager for the housing development company received complaints from its tenants that the Petitioner was regularly arriving to work late. The Property Manager reviewed video tapes of the premises and from those tapes concluded the Petitioner had arrived to work late June 27, 2008, through June 30, 2008. The Property Manager further determined that the Petitioner had signed his time sheets for those days as if the Petitioner had arrived to work on time.
9. On July 3, 2008, the Employer discharged the Petitioner. The Employer stated it discharged the Petitioner due to excessive tardiness and time abuse.
10. As a result of its investigation, the Respondent determined that between October 2006 and October 2008, the Employer had terminated 25 employees for poor attendance and excessive tardiness. Of those 25 employees, 19 were under the age of 40.
11. In his charge, the Petitioner alleged the Employer transferred him, reduced his work hours, and subsequently discharged him because of his age, 50.
12. In his Request, the Petitioner argues the Employer did not follow the proper procedure when it transferred him to his new work site. The Petitioner also argues the Employer lied to the Respondent about the number of times he was tardy, and that the Employer falsified various documents to use against him.

13. In its Response, the Respondent requests the Commission sustain the dismissal of the Petitioner's charge for Lack of Substantial evidence because the evidence was insufficient to establish a prima facie case of discrimination. Further, the Respondent contends the Employer articulated a non-discriminatory reason for its actions and there was no substantial evidence of pretext.
14. In the Petitioner's Reply, the Petitioner further argues that he has clearly demonstrated that the Respondent treated him differently than his younger co-workers.

Conclusion

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

As to Count A, wherein the Petitioner alleged that in June 2008 he was removed from his post at the university and transferred to the housing development company because of his age, the Commission finds that no evidence has been presented which substantiates this claim. When the Petitioner was first hired by the Employer, the Petitioner signed an "Acknowledgement" which clearly informed him that one of his job requirements was that he was subject to being transferred to different client sites by the Employer.

Furthermore, the Employer presented evidence that it had treated the Petitioner the same as it had treated a similarly-situated younger employee. The Employer had removed a younger security officer from his post at the same university, during the same period of time the Petitioner had been removed.

As to Count B, wherein the Petitioner alleged a reduction in work hours on June 19, 2008, because of his age, there is no evidence the Employer treated a similarly-situated younger security officer more favorably than the Petitioner. The Respondent determined that during the time period alleged, the Petitioner was assigned fewer hours because he was in training at his new work site, which at that time was the housing development company. Once the Petitioner had completed his training, the Petitioner began to receive the same amount of hours or more, as similarly situated younger security officers also assigned to work at the housing development company.

Finally, as to Count C, there is no substantial evidence the Employer discharged the Petitioner because of his age. The Respondent determined the Employer had terminated similarly situated younger employees for poor attendance and excessive tardiness, which was the same reason the

Employer articulated for discharging the Petitioner. Thus, there is no evidence the Employer treated younger employees more favorably than the Petitioner under similar circumstances, or that the Employer's articulated non-discriminatory reason for discharging the Petitioner was a pretext for age discrimination.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and, Securitas Security Services USA, Inc., as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

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HUMAN RIGHTS COMMISSION

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Entered this 25th day of August 2010

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen